

Request for Reconsideration under 37 C.F.R. § 1.111
U.S. Application No. 10/716,422

Attorney Docket No. Q78585

REMARKS

In the last Office Action claims 1-20 inclusive were rejected under the judicially created doctrine of double patenting over claims of U.S. Patent No. 6,279,457 since the claims, if allowed, would improperly extend the “right to exclude” already granted in the patent. Claims 1-20 inclusive were further rejected under 35 U.S.C. § 102 as being anticipated by DE 10111968.

The present invention is directed to a sprinkling device which is designed to convert a conventional storage tank into a fermentation device in order to carry out the wine fermentation process with recirculation of the wine must from the bottom region of the storage tank into the sprinkling device whereby the recirculated wine is sprinkled into the top region of the storage tank.

The principle feature of the claimed invention is the provision of an auxiliary tank which can be fitted in the top opening of a conventional tank. This feature is specifically called for in claim 1 of the application.

Claim 1 further calls for the first and second discharge means. The first discharge means are quite conventional in the art and consist of a closure member (14) in the form of a plate and an operating rod (16) which is driven by an actuator (19). The second discharge means are not conventional and are not disclosed by any of the prior art of record. In addition to the first discharge means, claim 1 specifically calls for a second means which “can discharge the wine must by means of a second sprinkling stream when the level of recirculated wine must in the auxiliary tank reaches a predetermined level”. This latter feature means that the second discharge means automatically cause the discharge of the wine must when the predetermined

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level is reached. In other words, the second discharge means cause the discharge of the must, without actuating the first discharge means. Claim 2 further defines the discharge means as comprising an auxiliary discharge opening in the closure member and an overflow duct communicating with the opening in order to deliver the recirculated wine must through the auxiliary opening.

With respect to the double patenting rejection based on U.S. Patent 6,279,457. The Examiner is apparently referring to the embodiment shown Figure 2 and described from column 3, line 61 to column 4, line 22 and claim 8. The embodiment of Figure 2 of the patent refers to a first closure member 28 and a second closure member 33 which are suitable to produce a first and second spray jet. It is noted that both the first and second closure means in the patent are driven by the actuator means which cause the rod 17 to move downwards. There is absolutely no disclosure whatsoever in the patent of discharge means which cause the discharge of the wine must when the level in the upper tank has reached its predetermined value. Furthermore in the patent there is no disclosure whatsoever of an auxiliary sprinkling device consisting of an auxiliary tank which can be fitted into the top opening of the main tank. The arrangement disclosed in the patent is a one piece device having an upper and lower tank.

With respect to the argument raised by the Examiner in the last Office Action according to which there is "no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application, which matured into a patent". However it is absolutely clear that claim 1 of the present application includes "new matter" which is not disclosed by the US '457 patent. Therefore, if the claims of

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the present application were presented in the earlier application, they would have been rejected as not supported by the disclosure.

In view of the forgoing distinctions, it is clear that claims 1-20 inclusive can not be rejected under the traditionally created doctrine of double patenting over the claims over U.S. Patent No. 6,279,457.

With respect to the rejection of claims 1-20 under 35 U.S.C. § 102 as being clearly anticipated by DE 10111968 it is pointed out that U.S. Patent 6,805,885 which was cited in the last Office Action claims priority based on the German patent. U.S. Patent 6,805,885 has the same inventor (Marco Francia) of the present application. It is not understood why the Examiner is rejecting the claims on the bases of the German reference, rather that the US Patent which has the same content. In any event the German patent and the corresponding US Patent do not at all anticipate the present invention as defined by the claims of the present application. There is no disclosure whatsoever in the cited reference of the auxiliary tank, which can be fitted with fixing means to the opening of the storage tank and moreover there is no disclosure of an auxiliary tank having second discharge means. Therefore it is submitted that claims 1-20 inclusive are clearly not anticipated by the German reference nor would they be the least be obvious in view of the teachings of the German reference.

In view of the forgoing arguments it is submitted that claims 1-20 inclusive are clearly allowable as respectfully requested that these claims be allowed passed the issue forthwith.

If for any reason the Examiner is unable to allow the Application on the next Office Action and feels that an Interview will be helpful to resolve any remaining issue, he is

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respectfully requested to contact the undersigned Attorney for the purpose of arranging such an Interview.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: February 21, 2006

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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: Q78585

Marco FRANCIA

Appln. No.: 10/716,422

Group Art Unit: 1761

Confirmation No.: 6553

Examiner: Timothy F. Simone

Filed: November 20, 2003

For: AN AUXILIARY SPRINKLING AND RECIRCULATION DEVICE FOR WINE-
MAKING TANKS

PETITION FOR EXTENSION OF TIME UNDER 37 C.F.R. § 1.136

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 1.136, Applicant hereby petitions for an extension of time of two months, extending the time for responding to the Office Action of September 20, 2005 to February 21, 2006 (Monday, February 20, 2006 being a Federal holiday).

The USPTO is directed and authorized to charge the amount of \$225.00 and all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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